

**U.S. House of Representatives Committee on Government Reform
“Foreign Travel to the United States”**

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Good morning Chairman Davis, Ranking Member Waxman, and distinguished Members of the Committee. On behalf of Fragomen, Del Rey, Bernsen & Loewy, P.C. (FDB&L), it is a privilege to have the opportunity to testify before this committee today. As we have heard from my co-panelists this morning, concern about the impact of visa processing delays on U.S. businesses has risen to the top ranks of corporate America. They have articulated the costs to U.S. business and the U.S. economy of policies that unduly restrict and delay the entrance of foreign employees and visitors. We have also heard of the agencies' plans for improving the system, and we commend them for their efforts. I hope this morning to offer recommendations, from a corporate practitioner's perspective, on how we can meet our goal of achieving a secure, fair and efficient system. I have submitted a full statement for the record, and look forward to answering any questions that you might have.

Founded in 1951, FDB&L is the world's largest firm practicing exclusively in the area of global immigration and nationality law. Our firm provides immigration services worldwide to multinational corporations, emerging companies, universities, entertainers, entrepreneurs, and professional sports organizations, all of which employ foreign nationals on a temporary or permanent basis in the United States or overseas.

FDB&L delivers immigration services of an unparalleled scope and scale, with 130 attorneys practicing in offices located across the United States and in Europe and the Pacific Rim. FDB&L offers guidance in the various practice areas surrounding corporate immigration policy, including U.S. immigration and Department of Labor compliance, international visa services, and U.S. immigration-related export control. In addition, FDB&L operates a government affairs office that provides our clients with legislative and regulatory expertise and representation in Washington, D.C. for immigration-related matters. Members of our firm sit on the Boards and the immigration steering committees of the U.S. Chamber of Commerce, the American Bar Association, the Information Technology Association of America, and the American Council on International Personnel to name just a few, and several partners also have in the past or presently teach immigration law at some of the country's leading law schools.

I have practiced various aspects of immigration law for the past 25 years and currently serve as head of the firm's Export Control Practice Group. In this capacity I deal with a myriad of issues involving the visa process and the impact of national security concerns on how companies recruit and deploy their foreign national workforce. I have and continue to serve as a policy and legal advisor to various industry groups and Fortune 500 companies on immigration and related national security issues.

Mr. Chairman, national security has long intersected with immigration law. I have spent my career advising companies on the immigration, export control and other legal concerns surrounding their relationships with foreign employees, clients and business partners. For most of the public, and much of corporate America, the national security provisions of our immigration laws operated invisibly or were but a minor burden prior to September 11, 2001. The tragic events of that day dramatically brought to the forefront the urgent need for greater scrutiny of those who seek entry to our country.

In moving swiftly to protect our borders we must not lose sight of the connection between security, immigration and the economy. Global mobility is, more than ever, essential to the growth and stability of both the U.S. and international business community. Our elaborate employment-based immigration

framework provides companies and organizations with access to highly educated and specially skilled foreign professionals. In addition our visa policies provide for entry by foreign clients and business partners whose presence may be essential to the success of a wide range of domestic and global business transactions. With U.S. industry continually seeking new opportunities and markets to maintain and expand operations, international mobility will be an increasingly important component of business strategy and global competitiveness. Ideally, our immigration process and programs will continue to evolve and provide for the fluidity and mobility necessary in a global economy.

The challenge before us is not insurmountable – reconciling security concerns with the need for efficient processes to facilitate business mobility are not mutually exclusive goals. In seeking this balance, and in implementing protocols and procedures we need look no further than to those principles that have served our nation so well for so long. Fairness and transparency in process. Dignity towards the individual. Creativity and effectiveness in getting the job done. In this regard, there are four areas in which the government can and must improve: Intergovernmental Coordination; Industry-Government Cooperation; Customer Service; and New Technologies.

1. Intergovernmental Coordination

After September 11, 2001, it became evident that our government agencies were not communicating sufficiently with each other. While we have already seen dramatic improvement, we believe that there is still much more that needs to be done in this regard. For example, the Department of Commerce (DOC) has not been involved in the Security Advisory Opinion (SAO) working group put together by the Department of State (DOS) despite the fact that the Visas Mantis review to screen for access to sensitive technology is dependent on coordination with the DOC. Moreover, consular officials acknowledge that no credit is given for DOC deemed export license reviews even though that process may have involved many of the same checks that are run a second time in connection with visa issuance. Similarly, when the Bureau of Citizenship and Immigration Services (BCIS) investigates a “hit” during background checks and subsequently is able to clear the individual, this information is not shared with DOS who then must make this check all over again. This duplicative work is a less than efficient use of our limited resources, and it frustrates U.S. companies who do not understand why clearances obtained from one agency are not recognized by another.

We recommend that the government take steps necessary to ensure all appropriate government agencies are sitting at the table when policy and process decisions are made. The consolidation of visa policy in the Department of Homeland Security (DHS) provides a unique opportunity for coordination yet it is not clear that all interested agencies and bureaus are being consulted. This must change. In addition we recommend that the government take action to make all aspects of the visa process more transparent. While we recognize that security considerations prohibit the sharing of classified and certain highly sensitive information, basic insight into the paths of inquiry a particular application may take, the timeframe for decisions, and the role of each participating agency would alleviate some of industry’s concerns.

2. Industry-Government Cooperation

It is in the economic interest of both U.S. employers and our nation to have a functioning and secure system to welcome business visitors and employees into the United States. Industry-government communication and cooperation is vital to this effort. In the customs arena, recent industry-government cooperation has greatly facilitated the inspection and movement of cargo. Pre-clearance of goods and containers before they reach U.S. borders, and the recognition of “known shippers” enhance security and

efficiency. Important lessons are to be learned from this example, and similar efforts should be explored with respect to the movement of people.

An Industry-Government Advisory Panel could be established to recommend areas where communication and cooperation could be improved. This Panel could explore pre-certification programs to streamline all or parts of the visa application process for companies with proven immigration and export control compliance thus allowing the respective agencies to devote their limited resources to the areas of greatest risk.

The Panel could further recommend process changes to minimize business disruptions, including those that now occur in the visa revalidation process for employees already in the United States. For example, for employees from the Middle East who must return home to renew their visas, there is no way for a company to start the paperwork ahead of time. This means companies must either refuse to allow an employee to travel or find a way to be without the employee for months. Such a Hobbesian choice is unacceptable. We are not seeking pre-approval or even expedited approval, merely mechanisms to begin the paperwork process in advance.

Industry could also provide expertise to the government in terms of what information it should collect. From our perspective, it is not clear that agencies are even asking for the appropriate information necessary to elicit effective and thorough security decisions. The information collected about visa applicants is inconsistent and not necessarily germane to the inquiry. A Panel could help develop a more meaningful, focused and coordinated process.

Finally, improved communication with U.S. business is essential. Companies can prepare and make the necessary contingency plans if they know the rules in advance, *e.g.* what paperwork is needed, processing times and procedures. Companies often are not told why visa issuance has been delayed or why someone is denied a visa, perhaps in part, due to privacy considerations. If in fact there is a security-related delay in visa issuance, companies want and need to know certain details for their own security, for the security of their customers, and to meet work-related and contractual deadlines critical to maintaining and expanding business opportunities.

Greater transparency and better communication would allow the company to provide supplemental information that would assist the agencies in conducting the reviews in a timely manner and alleviate the business costs of unpredictable delays. This is of particular importance to the Visas Mantis program as the required technical information is uniquely within the control of the sponsoring company and is key to any meaningful review of possible export control violations involving sensitive technologies.

While we appreciate the efforts made to place more information on the Internet, the ability to contact agency officials to discuss a particular case is crucial. This is particularly true in emergency situations where it is imperative that an employee travels in a timely manner. We urge the agencies to think creatively about opening lines of communication that provide useful information in a timely and responsive manner.

3. Customer Service

The enhanced security procedures have added immeasurably to the stress and uncertainty faced by those who seek entry to the United States. In many cases the visa and entry process is the only contact a foreign individual may have with the U.S. government. That first impression may last a lifetime, to be shared

with countless others who may never set foot on our soil. Our actions and the examples we set may also have a reciprocal impact on how other governments treat U.S. citizens traveling abroad.

Visa applicants must be able to understand the process, and know what is happening with their applications and paperwork. Foreign nationals are frustrated when their passports are held by the U.S. government for months while an SAO is conducted. They are upset by the time and money required to call 900 numbers to schedule appointments for interviews. Stranded abroad for no apparent reason, foreign nationals become angry and scared when unable to return to their jobs and families in the United States. Business visitors begin to doubt the advisability of travel to and investment in the United States.

Technology can help facilitate this process and reduce the vagaries of new security measures. We appreciate DOS expanding the use of its website to report on consular functions and procedures, and the Internet is already proving helpful in scheduling some consular appointments. Such information and functions must continue to be expanded and updated on a regular basis.

The agencies are in a difficult situation given limited resources and mandates to enact ever increasing security measures. In addition to much needed additional resources, agency sensitivity to customer service issues will help to diffuse the problem. This circumstance is not unlike that faced by the airports in the wake of September 11th. The general view was that the baggage and passenger inspection process was unprofessional and ineffective, in addition to being intrusive. There has been a marked change in public perception since the Transportation Security Administration has taken over the inspection process. The attitude, training, and professionalism of the TSA staff has significantly improved the public acceptance of what is a necessary, if unpleasant, procedure. A comparable approach should be taken in connection with the visa and border inspection process.

4. New Technologies

Finally, I would like to focus on issues and potential additional delays as DOS moves to require interviews for almost all visa applicants, and the use of new technologies to help prevent or diminish the impact of these delays. In May 2003, DOS announced new guidelines that will substantially increase the class of nonimmigrant visa applicants required to appear at consulates for personal interviews. The vast majority of foreign nationals will be required to make personal appearances in conjunction with their nonimmigrant visa applications, and the result, as DOS has acknowledged, will be significant processing delays.

As Congress and the relevant departments and agencies implement new security-related measures that inherently delay visa issuance and entry, we should also be exploring technology-based avenues to reduce the interview time at Consulates and to otherwise achieve efficiencies. As a preliminary matter, we thank DOS and urge the continued use by Consular Posts of automated appointment systems to manage their workloads. We strongly advocate that all efforts possible be made to allow use of the Internet to schedule appointments and interviews.

Electronic filing of visa applications would reduce the burden on government data entry staff and contractors, and would save employers significant resources presently devoted to courier costs. Electronic filing and digital signatures, even more so than traditional filing and manual signatures, prevent fraud and protect the integrity of written documents. These technologies must be linked with other planned technology enhancements, such as biometric identifiers, machine-readable passports and visas, and the U.S. VISIT system, to ensure a coordinated effort.

Conclusion

The reassessment of U.S. immigration-related security considerations prompted by the events of September 11, 2001 has presented new obstacles and burdens for multinational employers as well as for foreign nationals seeking admission to the United States. These hearings provide an opportunity to begin a meaningful dialogue for change, a partnership so to speak between business and government, the common objective of which is to maintain U.S. competitiveness and economic interests while improving the security of our borders and the effectiveness of our visa process.

Ensuring security and improving efficiency are not conflicting ideals when it comes to global mobility. The U.S. business community, with its technology, ingenuity and resources, stands willing and able to assist government agencies to this end. With such a partnership we shall not fail in this most critical of challenges.

Thank you for your time and consideration.

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